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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on November 5, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST-2002-13663- 3

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of COMPANIA MEXICANA DE AVIACION, S.A. DE C.V. (MEXICANA), and UNITED AIR LINES, INC. (UNITED) filed 10/23/02, for:

XX Exemption for United for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between (1) the terminal point Los Angeles, California, and the terminal point Zacatecas, Mexico; and (2) the terminal point Los Angeles, California, and the terminal point Morelia, Mexico. United intends to operate this service under a code-share arrangement with Mexicana on flights operated by Mexicana. ¹

XX Statement of Authorization for Mexicana for indefinite duration under Part 212 of the Department's Regulations to:

Display United's "UA" designator code on flights operated by Mexicana in the Los Angeles-Zacatecas and Los Angeles-Morelia markets. ²

Applicant reps: Robert D. Papkin (Mexicana) (202) 626-6601

Jeffrey A. Manley (United) (202) 663-6670

DOT Analyst: Linda Lundell (202) 366-2336

D I S P O S I T I O N

XX Granted, subject to conditions (see remarks/conditions, below)

The above action, granting a statement of authorization to Mexicana was effective when taken: November 5, 2002, and will remain in effect indefinitely, subject to the conditions below.

The above action, granting new exemption authority to United was effective when taken: November 5, 2002, through November 5, 2004.

Action taken by: Paul L. Gretch, Director
Office of International Aviation

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¹ Mexicana currently holds exemption authority to provide services in the Los Angeles-Zacatecas market (see Docket OST-95-452), and the Los Angeles-Morelia market (see Docket OST-96-1364).

² The carriers also request a waiver of the 45-day advance notice requirement contained in 14 CFR Section 212.10(d)(2).

XX The authority granted is consistent with the aviation agreement between the United States and Mexico.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

- XX United's certificates of public convenience and necessity**
- XX Mexicana's foreign air carrier permit**
- XX Standard Exemption Conditions (attached)**

Remarks: We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.

Conditions: The U.S.-Mexico exemption authority granted to United is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2, and is limited to operations conducted on a code-share basis only.

The Statement of Authorization granted Mexicana is subject to the following conditions:

- (a) The statement of authorization will remain in effect only as long as United and Mexicana continue to hold the underlying authority to operate the code-share services at issue, and the code-share agreement providing for the code-share operations remains in effect.
- (b) United and/or Mexicana must promptly notify the Department (Office of International Aviation) if the code-share agreement is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services.³ (Such notice should be filed in Docket OST-2002-13663.)
- (c) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendment to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected; and the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition; and

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³ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

- (d) The authority granted here is specifically conditioned so that neither United nor Mexicana shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicants qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the application was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dnm.dot.gov/reports/reports_aviation.asp*

APPENDIX

U.S. CARRIER **Standard Exemption Conditions**

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations and with all applicable U.S. Government requirements concerning security;⁴ and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

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⁴ To assure compliance with all applicable U.S. Government requirements concerning security, the holder should, before commencing any new service (including charter flights) to or from a foreign airport, inform its Principal Security Inspector of its plans.